

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC., an Illinois
corporation,

Plaintiff/Counterclaim
Defendant,

v.

MICROSOFT CORPORATION, a Washington
corporation,

Defendant/Counterclaim
Plaintiff.

NO. 2:20-cv-00882-MLP

**DECLARATION OF MARK
LORBIECKI IN SUPPORT OF ODS'S
RESPONSE TO DEFENDANT
MICROSOFT CORPORATION'S
MOTION TO EXCLUDE EXPERT
TESTIMONY OF CEDAR BOSCHAN**

**NOTED ON MOTION CALENDAR:
February 25, 2022**

ORAL ARGUMENT REQUESTED

1. I am an attorney for Plaintiff/Counterclaim Defendant O'Donnell/Salvatori, Inc. ("ODS") in the above-entitled action. I make this declaration based on personal knowledge, am over the age of 18 and competent to testify.

2. Attached hereto as Exhibit A is a confidential email indicating to Mr. Marty O'Donnell that Microsoft would not elect to complete registration of works by ODS relative to the Halo game series.

3. Attached hereto as Exhibit H is a confidential acknowledgement that Microsoft itself in the person of Frank O'Connor had no real conception of what royalties are owed to ODS.

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RESPONSE TO DEFENDANT MICROSOFT CORPORATION'S
MOTION TO EXCLUDE EXPERT TESTIMONY OF CEDAR
BOSCHAN - 1
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

1 4. Attached hereto as Exhibit I is an email from Sumthing Else Music, the distributor
2 hired by Microsoft and charged with accounting for sales and distribution of Halo music
3 admitting that all records relative to earned royalties for Halo music sales and distributions are
4 in error.

5 5. Exhibit J is a true and accurate excerpted copy of the 30(b)(6) deposition of
6 Microsoft indicating that Microsoft had used various of the ODS works to form new music which
7 was not properly attributed to either of Michael Salvatori or Martin O'Donnell.

8 6. Attached hereto as Exhibit K is a true and correct copy of excerpts of the Joel
9 Yarger deposition.

10 7. Attached hereto as Exhibit L is a true and correct copy of excerpts of the Martin
11 O'Donnell deposition.

12 8. Attached hereto as Exhibit M is a true and correct copy of excerpts of the Michael
13 Salvatori deposition.

14 9. Attached hereto as Exhibit N is a true and correct copy of excerpts of the Paul
15 Lipson deposition.

16 10. Attached hereto as Exhibit O is a true and correct copy of excerpts of the Sotaro
17 Tojima deposition.

18 11. Attached hereto as Exhibit P is a true and correct copy of excerpts of the Thomas
19 Salta deposition.

20 12. Attached hereto as Exhibit R is a true and correct copy of excerpts of the Timothy
21 Salzman deposition.

22 13. THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY
23 KNOWLEDGE, SO STATED UNDER PENALTY OF PERJURY UNDER THE LAWS OF
24 THE STATE OF WASHINGTON AND THE UNITED STATES OF AMERICA.

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2 DATED this 11th day of February, 2022.
3

4 s/ Mark Lawrence Lorbiecki

5 Mark Lawrence Lorbiecki, WSBA # 16796
6 **WILLIAMS, KASTNER & GIBBS PLLC**
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12 *Attorneys for Plaintiff/Counterclaim*
13 *Defendant O'Donnell/Salvatori, Inc.*
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